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Office of the Standing Chapter 13 Trustee
125 E. John Carpenter Freeway, Suite 1100
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(214) 855-9200/(214) 965-0758 Fax

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE
JOSE ANTONIO CABALLERO

CASE NO. 11-34738-HDH-13

Debtor(s)

Hearing: Sep 29, 2011
Time: 8:30 A.M./ 2:00 PM

TRUSTEE'S MOTION TO DISMISS WITH PREJUDICE

TO THE HONORABLE HARLIN D. HALE, BANKRUPTCY JUDGE:

Comes now, **Standing Chapter 13 Trustee**, Movant herein, and pursuant to Sections 1307(c) and 109(g) of the Bankruptcy Code and Bankruptcy Rule 9014 files this his Motion to Dismiss the above proceeding with prejudice, and would show unto the Court as follows:

1. Debtor(s) initiated this instant Chapter 13 proceeding by the filing of a voluntary petition on Thu Jul 28, 2011.
2. Debtor's voluntary petition discloses 2 of debtor's(s') prior 2 Bankruptcy proceedings.
 - A. **Case No 10-44556-RFN-13** , which case was disclosed, was filed on 07/06/2010 and dismissed prior to confirmation by the Bankruptcy Court for failure to file paperwork on 08/09/2010. Debtor(s) was represented by Patrick West in this matter.
 - B. **Case No 11-40216-RFN-13** , which case was disclosed, was filed on 01/04/2011 and dismissed prior to confirmation for failure to make the first payment to the Trustee on 02/17/2011. Debtor(s) was represented by Patrick West in this matter.
3. Debtor's pattern of filing repetitive Chapter 13 proceedings constitutes "serial filings." As noted, this is the Debtor's third Bankruptcy proceeding since 07/06/2010.

The filing of serial Chapter 13 petitions is not per se prohibited. However, the Trustee submits that debtor's serial filings exhibit lack of "good faith" as required by 11 U.S.C Section 1307(c) which states in part:"... on the request of a party in interest ... and after notice and a hearing, the court may convert ... or may dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, for cause, ..."

4. Debtor's attempt to manipulate the judicial process by reimposing the automatic stay through multiple filings works an arguable fraud on creditors. Thus, an abuse of Section 362 occurs when the Debtors have no intention of effectuating a realistic plan and the bankruptcy court's self executing injunction results in unnecessary and costly delay. Abuse of the automatic stay provision (by multiple filings) may constitute grounds for imposing the measures provided under Bankruptcy Rule 9011. See, In re Franz, 142 B.R. 611 (Bkrtpcy.D.Conn) 1992).

5. The previous filings of the Debtor(s) shows a pattern of conduct that does not comport with the spirit of the Bankruptcy Code's provisions. This supports a conclusion that the latest in a series of petitions was filed for the primary purpose of delaying creditors.

Wherefore, **Standing Chapter 13 Trustee**, Movant herein prays for the entry by this Court of an Order **DISMISSING** the above styled Chapter 13 proceeding of the Debtors, with prejudice for a period one year, and for all other just and proper relief.

Respectfully submitted,

Standing Chapter 13 Trustee

By: /s/ Thomas D. Powers

Trustee/State Bar No. 16218700
125 E. John Carpenter Freeway, Suite 1100
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(214) 855-9200/(214) 965-0758 (Fax)

NOTICE OF HEARING ON TRUSTEE'S MOTION TO DISMISS WITH PREJUDICE

You are hereby notified of the filing of the "Trustee's Motion to Dismiss with Prejudice" and "Notice of Hearing Thereon" for the reasons therein stated.

A pre-hearing conference on the "Trustee's Motion to Dismiss with Predjudice" will be held on **Sep 29, 2011 at 8:30 AM** at 125 E. John Carpenter Freeway, Suite 1100, the Eleventh Floor, Irving, Texas 75062. Any objections to the proposed motion that are not resolved or defaulted at the pre-hearing conference will be heard by the Court at **2:00 PM** on the same day at 1100 Commerce Street, Fourteenth Floor, Dallas, Texas. Parties are not required to attend the pre-hearing conference unless they object to the motion.

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CASE NO. 11-34738-HDH-13
JOSE ANTONIO CABALLERO

Certificate of Service

I hereby certify that a copy of the foregoing "Trustee's Motion to Dismiss with Prejudice" and "Notice of Hearing Thereon" has been served to the following parties at the addresses listed below by United States First Class Mail.

Debtor(s): JOSE ANTONIO CABALLERO, PO BOX 801553, DALLAS TX, 75380

Debtor(s) Attorney: ARMSTRONG KELLETT BARTHOLOW PC, 11300 N CENTRAL EXPY, STE 301, DALLAS TX, 75243

Creditors: NONE

Dated: 08/10/2011

By: /s/ Thomas D. Powers